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and is detained there or is detained elsewhere in the charge of a constable, but is not in police detention if he is in court after being charged.”

(2) In the 1971 Act, in Schedule 2 after paragraph 25B, insert—

“Searching persons in police custody

- 25C (1) This paragraph applies if a person—
- (a) has been arrested under this Schedule; and
 - (b) is in custody at a police station.
- (2) An immigration officer may, at any time, search the arrested person in order to ascertain whether he has with him—
- (a) anything which he might use to—
 - (i) cause physical injury to himself or others;
 - (ii) damage property;
 - (iii) interfere with evidence; or
 - (iv) assist his escape; or
 - (b) any document which might—
 - (i) establish his identity, nationality or citizenship; or
 - (ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.
- (3) The power may be exercised only to the extent that the officer considers it to be necessary for the purpose of discovering anything of a kind mentioned in sub-paragraph (2).
- (4) An officer searching a person under this paragraph may seize and retain anything he finds, if he has reasonable grounds for believing that—
- (a) that person might use it for one or more of the purposes mentioned in sub-paragraph (2)(a); or
 - (b) it might be a document falling within sub-paragraph (2)(b).
- (5) But the officer may not retain anything seized under sub-paragraph (2)
- (a)—
 - (a) for longer than is necessary in view of the purpose for which the search was carried out; or
 - (b) when the person from whom it was seized is no longer in custody or is in the custody of a court but has been released on bail.
- (6) The person from whom something is seized must be told the reason for the seizure unless he is—
- (a) violent or appears likely to become violent; or
 - (b) incapable of understanding what is said to him.
- (7) An intimate search may not be conducted under this paragraph.
- (8) The person carrying out a search under this paragraph must be of the same sex as the person searched.
- (9) “Intimate search” has the same meaning as in section 28H(11).”

Seized material: access and copying

136 Access and copying

(1) In the 1971 Act, after section 28H, insert—

“28I Seized material: access and copying

- (1) If a person showing himself—
 - (a) to be the occupier of the premises on which seized material was seized, or
 - (b) to have had custody or control of the material immediately before it was seized,asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.
- (2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for him to have access to the material under the supervision—
 - (a) in the case of seized material within subsection (8)(a), of an immigration officer;
 - (b) in the case of seized material within subsection (8)(b), of a constable.
- (3) An immigration officer may photograph or copy, or have photographed or copied, seized material.
- (4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
 - (a) that person to have access to the material for the purpose of photographing or copying it under the supervision—
 - (i) in the case of seized material within subsection (8)(a), of an immigration officer;
 - (ii) in the case of seized material within subsection (8)(b), of a constable; or
 - (b) the material to be photographed or copied.
- (5) A photograph or copy made under subsection (4)(b) must be supplied within a reasonable time.
- (6) There is no duty under this section to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
 - (a) the exercise of any functions in connection with which the material was seized; or
 - (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.
- (7) “Relevant person” means—
 - (a) a person who had custody or control of seized material immediately before it was seized, or
 - (b) someone acting on behalf of such a person.

- (8) “Seized material” means anything—
- (a) seized and retained by an immigration officer, or
 - (b) seized by an immigration officer and retained by the police, under this Part.”

- (2) In the 1971 Act, in Schedule 2 after paragraph 25C, insert—

“Access and copying

- 25D (1) If a person showing himself—
- (a) to be the occupier of the premises on which seized material was seized, or
 - (b) to have had custody or control of the material immediately before it was seized,
- asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.
- (2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for that person to have access to the material under the supervision of an immigration officer.
- (3) An immigration officer may photograph or copy, or have photographed or copied, seized material.
- (4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
- (a) that person to have access to the material under the supervision of an immigration officer for the purpose of photographing or copying it; or
 - (b) the material to be photographed or copied.
- (5) A photograph or copy made under sub-paragraph (4)(b) must be supplied within a reasonable time.
- (6) There is no duty under this paragraph to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
- (a) the exercise of any functions in connection with which the material was seized; or
 - (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.
- (7) “Relevant person” means—
- (a) a person who had custody or control of seized material immediately before it was seized, or
 - (b) someone acting on behalf of such a person.
- (8) “Seized material” means anything which has been seized and retained under this Schedule.”

Status: This is the original version (as it was originally enacted).

Search warrants

137 Search warrants: safeguards

In the 1971 Act, after section 28I, insert—

“28J Search warrants: safeguards

- (1) The entry or search of premises under a warrant is unlawful unless it complies with this section and section 28K.
- (2) If an immigration officer applies for a warrant, he must—
 - (a) state the ground on which he makes the application and the provision of this Act under which the warrant would be issued;
 - (b) specify the premises which it is desired to enter and search; and
 - (c) identify, so far as is practicable, the persons or articles to be sought.
- (3) In Northern Ireland, an application for a warrant is to be supported by a complaint in writing and substantiated on oath.
- (4) Otherwise, an application for a warrant is to be made ex parte and supported by an information in writing or, in Scotland, evidence on oath.
- (5) The officer must answer on oath any question that the justice of the peace or sheriff hearing the application asks him.
- (6) A warrant shall authorise an entry on one occasion only.
- (7) A warrant must specify—
 - (a) the name of the person applying for it;
 - (b) the date on which it is issued;
 - (c) the premises to be searched; and
 - (d) the provision of this Act under which it is issued.
- (8) A warrant must identify, so far as is practicable, the persons or articles to be sought.
- (9) Two copies of a warrant must be made.
- (10) The copies must be clearly certified as copies.
- (11) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2.”

138 Execution of warrants

In the 1971 Act, after section 28J, insert—

“28K Execution of warrants

- (1) A warrant may be executed by any immigration officer.
- (2) A warrant may authorise persons to accompany the officer executing it.
- (3) Entry and search under a warrant must be—

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- (a) within one month from the date of its issue; and
 - (b) at a reasonable hour, unless it appears to the officer executing it that the purpose of a search might be frustrated.
- (4) If the occupier of premises which are to be entered and searched is present at the time when an immigration officer seeks to execute a warrant, the officer must—
 - (a) identify himself to the occupier and produce identification showing that he is an immigration officer;
 - (b) show the occupier the warrant; and
 - (c) supply him with a copy of it.
- (5) If—
 - (a) the occupier is not present, but
 - (b) some other person who appears to the officer to be in charge of the premises is present,subsection (4) has effect as if each reference to the occupier were a reference to that other person.
- (6) If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.
- (7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.
- (8) An officer executing a warrant must make an endorsement on it stating—
 - (a) whether the persons or articles sought were found; and
 - (b) whether any articles, other than articles which were sought, were seized.
- (9) A warrant which has been executed, or has not been executed within the time authorised for its execution, must be returned—
 - (a) if issued by a justice of the peace in England and Wales, to the justices' chief executive appointed by the magistrates' court committee whose area includes the petty sessions area for which the justice acts;
 - (b) if issued by a justice of the peace in Northern Ireland, to the clerk of petty sessions for the petty sessions district in which the premises are situated;
 - (c) if issued by a justice of the peace in Scotland, to the clerk of the district court for the commission area for which the justice of the peace was appointed;
 - (d) if issued by the sheriff, to the sheriff clerk.
- (10) A warrant returned under subsection (9)(a) must be retained for 12 months by the justices' chief executive.
- (11) A warrant issued under subsection (9)(b) or (c) must be retained for 12 months by the clerk.
- (12) A warrant returned under subsection (9)(d) must be retained for 12 months by the sheriff clerk.
- (13) If during that 12 month period the occupier of the premises to which it relates asks to inspect it, he must be allowed to do so.

- (14) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2.”

139 Interpretation

- (1) In the 1971 Act, after section 28K, insert—

“28L Interpretation of Part III

In this Part, “premises” and “items subject to legal privilege” have the same meaning—

- (a) in relation to England and Wales, as in the Police and Criminal Evidence Act 1984;
 - (b) in relation to Northern Ireland, as in the Police and Criminal Evidence (Northern Ireland) Order 1989; and
 - (c) in relation to Scotland, as in section 33 of the Criminal Law (Consolidation) (Scotland) Act 1995.”
- (2) In the 1971 Act, in Schedule 2, after paragraph 25D insert—
“25E. Section 28L applies for the purposes of this Schedule as it applies for the purposes of Part III.”

Detention

140 Detention of persons liable to examination or removal

- (1) In paragraph 16 of Schedule 2 to the 1971 Act, for sub-paragraph (2) substitute—
- “(2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 or 12 to 14, that person may be detained under the authority of an immigration officer pending—
- (a) a decision whether or not to give such directions;
 - (b) his removal in pursuance of such directions.”
- (2) In paragraph 17(2) of that Schedule (power to grant constable a warrant to search and arrest), for the words from “authorising any constable” to “if need be” substitute “authorising any immigration officer or constable to enter, if need be”.

Fingerprinting

141 Fingerprinting

- (1) Fingerprints may be taken by an authorised person from a person to whom this section applies.
- (2) Fingerprints may be taken under this section only during the relevant period.
- (3) Fingerprints may not be taken under this section from a person under the age of sixteen (“the child”) except in the presence of a person of full age who is—
 - (a) the child’s parent or guardian; or

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- (b) a person who for the time being takes responsibility for the child.
- (4) The person mentioned in subsection (3)(b) may not be—
- (a) an officer of the Secretary of State who is not an authorised person;
 - (b) an authorised person.
- (5) “Authorised person” means—
- (a) a constable;
 - (b) an immigration officer;
 - (c) a prison officer;
 - (d) an officer of the Secretary of State authorised for the purpose; or
 - (e) a person who is employed by a contractor in connection with the discharge of the contractor’s duties under a detention centre contract.
- (6) In subsection (5)(e) “contractor” and “detention centre contract” have the same meaning as in Part VIII.
- (7) This section applies to—
- (a) any person (“A”) who, on being required to do so by an immigration officer on his arrival in the United Kingdom, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship;
 - (b) any person (“B”) who has been refused leave to enter the United Kingdom but has been temporarily admitted under paragraph 21 of Schedule 2 to the 1971 Act if an immigration officer reasonably suspects that B might break any condition imposed on him relating to residence or as to reporting to the police or an immigration officer;
 - (c) any person (“C”) in respect of whom—
 - (i) an immigration officer has given directions under paragraph 9(1) of Schedule 2 to the 1971 Act or under section 10;
 - (ii) the Secretary of State has given directions under paragraph 10(1) of Schedule 2 to the 1971 Act (but only in a case where it appears to the Secretary of State that the person is a person in respect of whom directions under paragraph 9 of that Schedule might be given); or
 - (iii) the Secretary of State has given directions under paragraph 1(1) of Schedule 3 to that Act;
 - (d) any person (“D”) who has been arrested under paragraph 17 of Schedule 2 to the 1971 Act;
 - (e) any person (“E”) who has made a claim for asylum;
 - (f) any person (“F”) who is a dependant of any of those persons.
- (8) “The relevant period” begins—
- (a) for A, on his failure to produce the passport or other document;
 - (b) for B, on the decision to admit him temporarily;
 - (c) for C, on the direction being given;
 - (d) for D, on his arrest;
 - (e) for E, on the making of his claim for asylum; and
 - (f) for F, at the same time as for the person whose dependant he is.
- (9) “The relevant period” ends on the earliest of the following—
- (a) the grant of leave to enter or remain in the United Kingdom;

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- (b) for A, B, C or D, his removal or deportation from the United Kingdom;
 - (c) for C, if a deportation order has been made against him, its revocation or otherwise ceasing to have effect;
 - (d) for D, his release if he is no longer liable to be detained under paragraph 16 of Schedule 2 to the 1971 Act;
 - (e) for E, the final determination or abandonment of his claim for asylum; and
 - (f) for F, at the same time as for the person whose dependant he is.
- (10) No fingerprints may be taken from A if the immigration officer considers that A has a reasonable excuse for the failure concerned.
- (11) No fingerprints may be taken from B unless the decision to take them has been confirmed by a chief immigration officer.
- (12) An authorised person may not take fingerprints from a person under the age of sixteen unless his decision to take them has been confirmed—
- (a) if he is a constable, by a person designated for the purpose by the chief constable of his police force;
 - (b) if he is a person mentioned in subsection (5)(b) or (e), by a chief immigration officer;
 - (c) if he is a prison officer, by a person designated for the purpose by the governor of the prison;
 - (d) if he is an officer of the Secretary of State, by a person designated for the purpose by the Secretary of State.
- (13) Neither subsection (3) nor subsection (12) prevents an authorised person from taking fingerprints if he reasonably believes that the person from whom they are to be taken is aged sixteen or over.
- (14) For the purposes of subsection (7)(f), a person is a dependant of another person if—
- (a) he is that person’s spouse or child under the age of eighteen; and
 - (b) he does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom.
- (15) “Claim for asylum” has the same meaning as in Part VI.

142 Attendance for fingerprinting

- (1) The Secretary of State may, by notice in writing, require a person to whom section 141 applies to attend at a specified place for fingerprinting.
- (2) The notice—
- (a) must give the person concerned a period of at least seven days within which to attend, beginning not earlier than seven days after the date of the notice; and
 - (b) may require him to attend at a specified time of day or during specified hours.
- (3) A constable or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under this section (unless the requirement has ceased to have effect).
- (4) Before a person arrested under subsection (3) is released—
- (a) he may be removed to a place where his fingerprints may conveniently be taken; and

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- (14) “Fingerprints” means fingerprints taken under section 141 and references to B, C, D, E and F are to the persons so described in that section.
- (15) “Specified period” means—
- (a) such period as the Secretary of State may specify by order;
 - (b) if no period is so specified, ten years.

144 Other methods of collecting data about physical characteristics

The Secretary of State may make regulations containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting data about external physical characteristics as may be prescribed.

Codes of practice

145 Codes of practice

- (1) An immigration officer exercising any specified power to—
- (a) arrest, question, search or take fingerprints from a person,
 - (b) enter and search premises, or
 - (c) seize property found on persons or premises,
- must have regard to such provisions of a code as may be specified.
- (2) Subsection (1) also applies to an authorised person exercising the power to take fingerprints conferred by section 141.
- (3) Any specified provision of a code may have effect for the purposes of this section subject to such modifications as may be specified.
- (4) “Specified” means specified in a direction given by the Secretary of State.
- (5) “Authorised person” has the same meaning as in section 141.
- (6) “Code” means—
- (a) in relation to England and Wales, any code of practice for the time being in force under the Police and Criminal Evidence Act 1984;
 - (b) in relation to Northern Ireland, any code of practice for the time being in force under the Police and Criminal Evidence (Northern Ireland) Order 1989.
- (7) This section does not apply to any person exercising powers in Scotland.

Use of force

146 Use of force

- (1) An immigration officer exercising any power conferred on him by the 1971 Act or this Act may, if necessary, use reasonable force.
- (2) Any person exercising a power conferred by section 141 or 142 or regulations under section 144 may, if necessary, use reasonable force.

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PART VIII

DETENTION CENTRES AND DETAINED PERSONS

Interpretation

147 Interpretation of Part VIII

In this Part—

“certificate of authorisation” means a certificate issued by the Secretary of State under section 154;

“certified prisoner custody officer” means a prisoner custody officer certified under section 89 of the Criminal Justice Act 1991, or section 114 of the Criminal Justice and Public Order Act 1994, to perform custodial duties;

“contract monitor” means a person appointed by the Secretary of State under section 149(4);

“contracted out detention centre” means a detention centre in relation to which a detention centre contract is in force;

“contractor”, in relation to a detention centre which is being run in accordance with a detention centre contract, means the person who has contracted to run it;

“custodial functions” means custodial functions at a detention centre;

“detained persons” means persons detained or required to be detained under the 1971 Act;

“detainee custody officer” means a person in respect of whom a certificate of authorisation is in force;

“detention centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;

“detention centre contract” means a contract entered into by the Secretary of State under section 149;

“detention centre rules” means rules made by the Secretary of State under section 153;

“directly managed detention centre” means a detention centre which is not a contracted out detention centre;

“escort arrangements” means arrangements made by the Secretary of State under section 156;

“escort functions” means functions under escort arrangements;

“escort monitor” means a person appointed under paragraph 1 of Schedule 13;

“prisoner custody officer”—

- (a) in relation to England and Wales, has the same meaning as in the Criminal Justice Act 1991;
- (b) in relation to Scotland, has the meaning given in section 114(1) of the Criminal Justice and Public Order Act 1994;
- (c) in relation to Northern Ireland, has the meaning given in section 122(1) of that Act of 1994;

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“short-term holding facility” means a place used solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed.

Detention centres

148 Management of detention centres

- (1) A manager must be appointed for every detention centre.
- (2) In the case of a contracted out detention centre, the person appointed as manager must be a detainee custody officer whose appointment is approved by the Secretary of State.
- (3) The manager of a detention centre is to have such functions as are conferred on him by detention centre rules.
- (4) The manager of a contracted out detention centre may not—
 - (a) enquire into a disciplinary charge laid against a detained person;
 - (b) conduct the hearing of such a charge; or
 - (c) make, remit or mitigate an award in respect of such a charge.
- (5) The manager of a contracted out detention centre may not, except in cases of urgency, order—
 - (a) the removal of a detained person from association with other detained persons;
 - (b) the temporary confinement of a detained person in special accommodation; or
 - (c) the application to a detained person of any other special control or restraint (other than handcuffs).

149 Contracting out of certain detention centres

- (1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any detention centre or part of a detention centre.
- (2) While a detention centre contract for the running of a detention centre or part of a detention centre is in force—
 - (a) the detention centre or part is to be run subject to and in accordance with the provisions of or made under this Part; and
 - (b) in the case of a part, that part and the remaining part are to be treated for the purposes of those provisions as if they were separate detention centres.
- (3) If the Secretary of State grants a lease or tenancy of land for the purposes of a detention centre contract, none of the following enactments applies to the lease or tenancy—
 - (a) Part II of the Landlord and Tenant Act 1954 (security of tenure);
 - (b) section 146 of the Law of Property Act 1925 (restrictions on and relief against forfeiture);
 - (c) section 19(1), (2) and (3) of the Landlord and Tenant Act 1927 and the Landlord and Tenant Act 1988 (covenants not to assign etc.);
 - (d) the Agricultural Holdings Act 1986;
 - (e) sections 4 to 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (irritancy clauses);

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- (f) the Agricultural Holdings (Scotland) Act 1991;
 - (g) section 14 of the Conveyancing Act 1881;
 - (h) the Conveyancing and Law of Property Act 1892;
 - (i) the Business Tenancies (Northern Ireland) Order 1996.
- (4) The Secretary of State must appoint a contract monitor for every contracted out detention centre.
- (5) A person may be appointed as the contract monitor for more than one detention centre.
- (6) The contract monitor is to have—
- (a) such functions as may be conferred on him by detention centre rules;
 - (b) the status of a Crown servant.
- (7) The contract monitor must—
- (a) keep under review, and report to the Secretary of State on, the running of a detention centre for which he is appointed; and
 - (b) investigate, and report to the Secretary of State on, any allegations made against any person performing custodial functions at that centre.
- (8) The contractor, and any sub-contractor of his, must do all that he reasonably can (whether by giving directions to the officers of the detention centre or otherwise) to facilitate the exercise by the contract monitor of his functions.
- (9) “Lease or tenancy” includes an underlease, sublease or sub-tenancy.
- (10) In relation to a detention centre contract entered into by the Secretary of State before the commencement of this section, this section is to be treated as having been in force at that time.

150 Contracted out functions at directly managed detention centres

- (1) The Secretary of State may enter into a contract with another person—
- (a) for functions at, or connected with, a directly managed detention centre to be performed by detainee custody officers provided by that person; or
 - (b) for such functions to be performed by certified prisoner custody officers who are provided by that person.
- (2) For the purposes of this section “detention centre” includes a short-term holding facility.

151 Intervention by Secretary of State

- (1) The Secretary of State may exercise the powers conferred by this section if it appears to him that—
- (a) the manager of a contracted out detention centre has lost, or is likely to lose, effective control of the centre or of any part of it; or
 - (b) it is necessary to do so in the interests of preserving the safety of any person, or of preventing serious damage to any property.
- (2) The Secretary of State may appoint a person (to be known as the Controller) to act as manager of the detention centre for the period—
- (a) beginning with the time specified in the appointment; and

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- (b) ending with the time specified in the notice of termination under subsection (5).
- (3) During that period—
 - (a) all the functions which would otherwise be exercisable by the manager or the contract monitor are to be exercisable by the Controller;
 - (b) the contractor and any sub-contractor of his must do all that he reasonably can to facilitate the exercise by the Controller of his functions; and
 - (c) the staff of the detention centre must comply with any directions given by the Controller in the exercise of his functions.
- (4) The Controller is to have the status of a Crown servant.
- (5) If the Secretary of State is satisfied that a Controller is no longer needed for a particular detention centre, he must (by giving notice to the Controller) terminate his appointment at a time specified in the notice.
- (6) As soon as practicable after making an appointment under this section, the Secretary of State must give notice of the appointment to those entitled to notice.
- (7) As soon as practicable after terminating an appointment under this section, the Secretary of State must give a copy of the notice of termination to those entitled to notice.
- (8) Those entitled to notice are the contractor, the manager, the contract monitor and the Controller.

152 Visiting Committees and inspections

- (1) The Secretary of State must appoint a committee (to be known as the Visiting Committee) for each detention centre.
- (2) The functions of the Visiting Committee for a detention centre are to be such as may be prescribed by the detention centre rules.
- (3) Those rules must include provision—
 - (a) as to the making of visits to the centre by members of the Visiting Committee;
 - (b) for the hearing of complaints made by persons detained in the centre;
 - (c) requiring the making of reports by the Visiting Committee to the Secretary of State.
- (4) Every member of the Visiting Committee for a detention centre may at any time enter the centre and have free access to every part of it and to every person detained there.
- (5) In section 5A of the Prison Act 1952 (which deals with the appointment and functions of Her Majesty’s Chief Inspector of Prisons), after subsection (5), insert—
 - “(5A) Subsections (2) to (5) apply to detention centres (as defined by section 147 of the Immigration and Asylum Act 1999 and including any in Scotland) and persons detained in such detention centres as they apply to prisons and prisoners.”

153 Detention centre rules

- (1) The Secretary of State must make rules for the regulation and management of detention centres.
- (2) Detention centre rules may, among other things, make provision with respect to the safety, care, activities, discipline and control of detained persons.

Custody and movement of detained persons

154 Detainee custody officers

- (1) On an application made to him under this section, the Secretary of State may certify that the applicant—
 - (a) is authorised to perform escort functions; or
 - (b) is authorised to perform both escort functions and custodial functions.
- (2) The Secretary of State may not issue a certificate of authorisation unless he is satisfied that the applicant—
 - (a) is a fit and proper person to perform the functions to be authorised; and
 - (b) has received training to such standard as the Secretary of State considers appropriate for the performance of those functions.
- (3) A certificate of authorisation continues in force until such date, or the occurrence of such event, as may be specified in the certificate but may be suspended or revoked under paragraph 7 of Schedule 11.
- (4) A certificate which authorises the performance of both escort functions and custodial functions may specify one date or event for one of those functions and a different date or event for the other.
- (5) If the Secretary of State considers that it is necessary for the functions of detainee custody officers to be conferred on prison officers or prisoner custody officers, he may make arrangements for that purpose.
- (6) A prison officer acting under arrangements made under subsection (5) has all the powers, authority, protection and privileges of a constable.
- (7) Schedule 11 makes further provision about detainee custody officers.

155 Custodial functions and discipline etc. at detention centres

- (1) Custodial functions may be discharged at a detention centre only by—
 - (a) a detainee custody officer authorised, in accordance with section 154(1), to perform such functions; or
 - (b) a prison officer, or a certified prisoner custody officer, exercising functions in relation to the detention centre—
 - (i) in accordance with arrangements made under section 154(5); or
 - (ii) as a result of a contract entered into under section 150(1)(b).
- (2) Schedule 12 makes provision with respect to discipline and other matters at detention centres and short-term holding facilities.

Status: This is the original version (as it was originally enacted).

156 Arrangements for the provision of escorts and custody

- (1) The Secretary of State may make arrangements for—
 - (a) the delivery of detained persons to premises in which they may lawfully be detained;
 - (b) the delivery of persons from any such premises for the purposes of their removal from the United Kingdom in accordance with directions given under the 1971 Act or this Act;
 - (c) the custody of detained persons who are temporarily outside such premises;
 - (d) the custody of detained persons held on the premises of any court.
- (2) Escort arrangements may provide for functions under the arrangements to be performed, in such cases as may be determined by or under the arrangements, by detainee custody officers.
- (3) “Court” includes—
 - (a) adjudicators;
 - (b) the Immigration Appeal Tribunal;
 - (c) the Commission.
- (4) Escort arrangements may include entering into contracts with other persons for the provision by them of—
 - (a) detainee custody officers; or
 - (b) prisoner custody officers who are certified under section 89 of the Criminal Justice Act 1991, or section 114 or 122 of the Criminal Justice and Public Order Act 1994, to perform escort functions.
- (5) Schedule 13 makes further provision about escort arrangements.
- (6) A person responsible for performing a function of a kind mentioned in subsection (1), in accordance with a transfer direction, complies with the direction if he does all that he reasonably can to secure that the function is performed by a person acting in accordance with escort arrangements.
- (7) “Transfer direction” means a transfer direction given under—
 - (a) section 48 of the Mental Health Act 1983 or section 71 of the Mental Health (Scotland) Act 1984 (removal to hospital of, among others, persons detained under the 1971 Act); or
 - (b) in Northern Ireland, article 54 of the Mental Health (Northern Ireland) Order 1986 (provision corresponding to section 48 of the 1983 Act).

157 Short-term holding facilities

- (1) The Secretary of State may by regulations extend any provision made by or under this Part in relation to detention centres (other than one mentioned in subsection (2)) to short-term holding facilities.
- (2) Subsection (1) does not apply to section 150.
- (3) The Secretary of State may make rules for the regulation and management of short-term holding facilities.

Miscellaneous

158 Wrongful disclosure of information

- (1) A person who is or has been employed (whether as a detainee custody officer, prisoner custody officer or otherwise)—
 - (a) in accordance with escort arrangements,
 - (b) at a contracted out detention centre, or
 - (c) to perform contracted out functions at a directly managed detention centre,is guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular detained person.
- (2) A person guilty of such an offence is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (3) “Contracted out functions” means functions which, as the result of a contract entered into under section 150, fall to be performed by detainee custody officers or certified prisoner custody officers.

159 Power of constable to act outside his jurisdiction

- (1) For the purpose of taking a person to or from a detention centre under the order of any authority competent to give the order, a constable may act outside the area of his jurisdiction.
- (2) When acting under this section, the constable concerned retains all the powers, authority, protection and privileges of his office.

PART IX

REGISTRAR'S CERTIFICATES: PROCEDURE

160 Abolition of certificate by licence

- (1) In the Marriage Act 1949, in section 26, omit subsection (2) (marriage under superintendent registrar's certificate to be by licence issued by the registrar or without licence).
- (2) In section 27 of the 1949 Act—
 - (a) in subsection (1), omit “without licence”;
 - (b) omit subsection (2);
 - (c) in subsection (3), in paragraph (a), omit “in the case of a marriage intended to be solemnized without licence,”;
 - (d) in subsection (3), omit paragraph (b).
- (3) Section 32 of the 1949 Act (marriage under certificate by licence) shall cease to have effect.

Status: This is the original version (as it was originally enacted).

- (4) In section 31 of the 1949 Act (marriage under certificate without licence requiring 21 days' notice)—
- (a) in subsection (1), omit “without licence” and for “twenty-one” substitute “15”;
 - (b) in subsection (2), for “twenty-one” substitute “15”;
 - (c) in subsection (4), omit “without licence” and for “said period of twenty-one days” substitute “waiting period in relation to each notice of marriage”.
- (5) In section 31 of the 1949 Act, after subsection (4) insert—
- “(4A) “The waiting period”, in relation to a notice of marriage, means—
- (a) the period of 15 days, or
 - (b) such shorter period as may be determined by the Registrar General under subsection (5A) or by a superintendent registrar under any provision of regulations made under subsection (5D),
- after the day on which the notice of marriage was entered in the marriage notice book.”
- (6) In section 31 of the 1949 Act, insert at the end—
- “(5A) If, on an application made to the Registrar General, he is satisfied that there are compelling reasons for reducing the 15 day period because of the exceptional circumstances of the case, he may reduce that period to such shorter period as he considers appropriate.
- (5B) “The 15 day period” means the period of 15 days mentioned in subsections (1) and (2).
- (5C) If the Registrar General reduces the 15 day period in a particular case, the reference to 15 days in section 75(3)(a) is to be treated, in relation to that case, as a reference to the reduced period.
- (5D) The Registrar General may by regulations make provision with respect to the making, and granting, of applications under subsection (5A).
- (5E) The regulations—
- (a) may provide for the power conferred by subsection (5A) to be exercised by a superintendent registrar on behalf of the Registrar General in cases falling within a category prescribed in the regulations;
 - (b) may provide for the making of an appeal to the Registrar General against a decision taken by a superintendent registrar in accordance with regulations made by virtue of paragraph (a);
 - (c) may make different provision in relation to different cases;
 - (d) require the approval of the Chancellor of the Exchequer.
- (5F) The Chancellor of the Exchequer may by order provide for a fee, of such an amount as may be specified in the order, to be payable on an application under subsection (5A).
- (5G) The order may make different provision in relation to different cases.
- (5H) The power to make regulations under subsection (5D) or an order under subsection (5F) is exercisable by statutory instrument.

(5I) Any statutory instrument made under subsection (5F) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

161 Notice of marriage

- (1) In the Marriage Act 1949, in section 27(1) (persons by whom notice of marriage must be given)—
 - (a) in paragraph (a), for “either” substitute “each”;
 - (b) in paragraph (b), for “either” substitute “each” and for “each registration district in which one of them has resided” substitute “the registration district in which he or she has resided”.
- (2) In section 27 of the 1949 Act, in subsection (3) (matters to be stated in notice of marriage), for “and place of residence” substitute “, place of residence and nationality”.
- (3) In the 1949 Act, in section 26(1) (marriages which may be solemnized on authority of a certificate of a superintendent registrar), for “a certificate” substitute “two certificates”.
- (4) In the Marriage Law (Ireland) Amendment Act 1863, in section 2(3) (matters to be stated in notice of marriage), after “dwelling place” insert “and the nationality”.

162 Power to require evidence

- (1) In the Marriage Act 1949, after section 28, insert—

“28A Power to require evidence

- (1) A superintendent registrar to whom a notice of marriage is given under section 27, or any other person attesting a declaration accompanying such a notice, may require the person giving the notice to provide him with specified evidence—
 - (a) relating to that person; or
 - (b) if the superintendent registrar considers that the circumstances are exceptional, relating to each of the persons to be married.
 - (2) Such a requirement may be imposed at any time—
 - (a) on or after the giving of the notice of marriage; but
 - (b) before the superintendent registrar issues his certificate under section 31.
 - (3) “Specified evidence”, in relation to a person, means such evidence of that person's—
 - (a) name and surname,
 - (b) age,
 - (c) marital status, and
 - (d) nationality,as may be specified in guidance issued by the Registrar General.”
- (2) In the Marriage Law (Ireland) Amendment Act 1863, after section 3, insert—

Status: This is the original version (as it was originally enacted).

“3A Power to require evidence

- (1) A registrar to whom a notice of marriage mentioned in section 2 is given may require the person giving the notice to provide him with specified evidence relating to each of the persons to be married.
- (2) Such a requirement may be imposed at any time—
 - (a) on or after the giving of the notice of marriage; but
 - (b) before the registrar issues his certificate.
- (3) “Specified evidence”, in relation to a person, means such evidence of that person's—
 - (a) name and surname,
 - (b) age,
 - (c) marital status, and
 - (d) nationality,
 as may be specified in guidance issued by the Registrar General.”

163 Refusal to issue certificate

- (1) In the Marriage Act 1949, in section 31(2) (issue of marriage certificate), for paragraph (a) substitute—
 - “(a) the superintendent registrar is not satisfied that there is no lawful impediment to the issue of the certificate; or”.
- (2) In the 1949 Act, after section 31, insert—

“31A Appeal on refusal under section 31(2)(a)

- (1) If, relying on section 31(2)(a), a superintendent registrar refuses to issue a certificate, the person applying for it may appeal to the Registrar General.
- (2) On such an appeal, the Registrar General must—
 - (a) confirm the refusal; or
 - (b) direct that a certificate be issued.
- (3) If—
 - (a) relying on section 31(2)(a), a superintendent registrar refuses to issue a certificate as a result of a representation made to him, and
 - (b) on an appeal against the refusal, the Registrar General declares the representation to have been frivolous and to be such that it ought not to obstruct the issue of a certificate,
 the person making the representation is liable for the costs of the proceedings before the Registrar General and for damages recoverable by the applicant for the certificate.
- (4) For the purpose of enabling a person to recover any such costs and damages, a copy of the declaration of the Registrar General purporting to be sealed with the seal of the General Register Office is evidence that the Registrar General has declared the representation to have been frivolous and to be such that it ought not to obstruct the issue of a certificate.”

Status: This is the original version (as it was originally enacted).

- (3) In the Marriages (Ireland) Act 1844, in section 16 (issue of marriage certificate), for “provided that no lawful impediment be shown to the satisfaction of the registrar why such certificate should not issue” substitute “unless the registrar is not satisfied that there is no lawful impediment to the issue of the certificate”.
- (4) In the 1844 Act, after section 16, insert—

“16A Appeal on refusal under section 16

- (1) If the registrar refuses to issue a certificate under section 16 on the ground that he is not satisfied that there is no lawful impediment to the issue of the certificate, the party by whom the notice was given may appeal to the Registrar General.
- (2) On such an appeal, the Registrar General must—
- (a) confirm the refusal; or
 - (b) direct that a certificate be issued.
- (3) If—
- (a) the registrar refuses to issue a certificate under section 16 on the ground specified in subsection (1) as a result of a representation made to him, and
 - (b) on an appeal against the refusal, the Registrar General declares the representation to have been frivolous and to be such that it ought not to obstruct the issue of a certificate,
- the person making the representation is liable for the costs of the proceedings before the Registrar General and for damages recoverable by the applicant for the certificate.
- (4) For the purpose of enabling a person to recover any such costs and damages, a copy of the declaration of the Registrar General purporting to be sealed with the seal of the General Register Office is evidence that the Registrar General has declared the representation to have been frivolous and to be such that it ought not to obstruct the issue of a certificate.”

PART X

MISCELLANEOUS AND SUPPLEMENTAL

164 Institution of proceedings

In section 3(2) of the Prosecution of Offences Act 1985 (proceedings which must be conducted by the Director of Public Prosecutions), after paragraph (a) insert—

- “(aa) to take over the conduct of any criminal proceedings instituted by an immigration officer (as defined for the purposes of the Immigration Act 1971) acting in his capacity as such an officer;”.

165 Procedural requirements as to applications

In the 1971 Act, after section 31, insert—

Status: This is the original version (as it was originally enacted).

“31A Procedural requirements as to applications

- (1) If a form is prescribed for a particular kind of application under this Act, any application of that kind must be made in the prescribed form.
- (2) If procedural or other steps are prescribed in relation to a particular kind of application under this Act, those steps must be taken in respect of any application of that kind.
- (3) “Prescribed” means prescribed in regulations made by the Secretary of State.
- (4) The power to make regulations under this section is exercisable by statutory instrument.
- (5) Any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

166 Regulations and orders

- (1) Any power to make rules, regulations or orders conferred by this Act is exercisable by statutory instrument.
- (2) But subsection (1) does not apply in relation to rules made under paragraph 1 of Schedule 5 or immigration rules.
- (3) Any statutory instrument made as a result of subsection (1) may—
 - (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate;
 - (b) make different provision for different cases or descriptions of case; and
 - (c) make different provision for different areas.
- (4) No order is to be made under—
 - (a) section 20,
 - (b) section 21,
 - (c) section 31(10),
 - (d) section 86(2),
 - (e) section 96(5),
 - (f) section 97(3),
 - (g) section 143(15), or
 - (h) paragraph 4 of Schedule 5,
 unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (5) No regulations are to be made under—
 - (a) section 9,
 - (b) section 46(8);
 - (c) section 53, or
 - (d) section 144,
 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

- (6) Any statutory instrument made under this Act, apart from one made—
(a) under any of the provisions mentioned in subsection (4) or (5), or
(b) under section 24(3) or 170(4) or (7),
shall be subject to annulment by a resolution of either House of Parliament.

167 Interpretation

- (1) In this Act—

“the 1971 Act” means the Immigration Act 1971;

“adjudicator” (except in Part VI) means an adjudicator appointed under section 57;

“Chief Adjudicator” means the person appointed as Chief Adjudicator under section 57(2);

“claim for asylum” (except in Parts V and VI and section 141) means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom;

“the Commission” means the Special Immigration Appeals Commission;

“country” includes any territory;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

“the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;

“the Immigration Acts” means—

- (a) the 1971 Act;
- (b) the Immigration Act 1988;
- (c) the Asylum and Immigration Appeals Act 1993;
- (d) the Asylum and Immigration Act 1996; and
- (e) this Act;

“prescribed” means prescribed by regulations made by the Secretary of State;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;

“voluntary organisations” means bodies (other than public or local authorities) whose activities are not carried on for profit.

- (2) The following expressions have the same meaning as in the 1971 Act—

“certificate of entitlement”;

“entry clearance”;

“illegal entrant”;

“immigration officer”;

“immigration rules”;

“port”;

“United Kingdom passport”;

“work permit”.

168 Expenditure and receipts

- (1) There is to be paid out of money provided by Parliament—
 - (a) any expenditure incurred by the Secretary of State or the Lord Chancellor in consequence of this Act; and
 - (b) any increase attributable to this Act in the sums so payable by virtue of any other Act.
- (2) Sums received by the Secretary of State under section 5, 32, 40, 112 or 113 or by the Lord Chancellor under section 48(4) or 49(4) must be paid into the Consolidated Fund.

169 Minor and consequential amendments, transitional provisions and repeals

- (1) Schedule 14 makes minor and consequential amendments.
- (2) Schedule 15 contains transitional provisions and savings.
- (3) The enactments set out in Schedule 16 are repealed.

170 Short title, commencement and extent

- (1) This Act may be cited as the Immigration and Asylum Act 1999.
- (2) Subsections (1) and (2) of section 115 come into force on the day on which the first regulations made under Schedule 8 come into force.
- (3) The following provisions come into force on the passing of this Act—
 - (a) section 4;
 - (b) section 9;
 - (c) section 15;
 - (d) section 27;
 - (e) section 31;
 - (f) section 94;
 - (g) section 95(13);
 - (h) section 99(4) and (5);
 - (i) sections 105 to 109;
 - (j) section 110(1), (2) and (8) (so far as relating to subsections (1) and (2));
 - (k) section 111;
 - (l) section 124;
 - (m) section 140;
 - (n) section 145;
 - (o) section 146(1);
 - (p) sections 166 to 168;
 - (q) this section;
 - (r) Schedule 9;
 - (s) paragraphs 62(2), 73, 78, 79, 81, 82, 87, 88 and 102 of Schedule 14;
 - (t) paragraphs 2 and 13 of Schedule 15.
- (4) The other provisions of this Act, except section 10 and paragraph 12 of Schedule 15 (which come into force in accordance with section 9), come into force on such day as the Secretary of State may by order appoint.

Status: This is the original version (as it was originally enacted).

- (5) Different days may be appointed for different purposes.
- (6) This Act extends to Northern Ireland.
- (7) Her Majesty may by Order in Council direct that any of the provisions of this Act are to extend, with such modifications (if any) as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.